

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 7107**  
**BILL NUMBER:** SB 382

**NOTE PREPARED:** Apr 11, 2005  
**BILL AMENDED:** Apr 6, 2005

**SUBJECT:** Alcoholic Beverage Matters.

**FIRST AUTHOR:** Sen. Alting  
**FIRST SPONSOR:** Rep. Alderman

**BILL STATUS:** As Passed House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) *Alcohol Server Training:* This bill requires the Alcohol and Tobacco Commission (ATC) to establish application requirements, fees, standards, and renewal requirements for certification of alcohol server training programs. The bill establishes requirements for the certification of alcohol server training programs. It also requires retail permittees to: (1) complete a certified alcohol server training program; (2) ensure that each alcohol server completes a certified alcohol server training program and attends refresher courses; and (3) maintain training verification records. The bill also prohibits an applicant for certification of an alcohol server training program from having an interest in a permit issued to a primary source of supply, a wholesaler, or a retailer.

*ATC Prosecutor Election:* This bill eliminates a requirement that the prosecutor for the Alcohol and Tobacco Commission reside in Indiana for five years before being appointed prosecutor.

*Alcohol Permit and Tobacco Certificate Changes:* This bill also increases the term of a retailer or dealer's permit to two years (instead of one year), but requires a permit fee to be paid annually. It increases the following permit fees:

- (1) One-way retailer's or dealer's permit from \$250 to \$500 annually.
- (2) Two-way retailer's or dealer's permit from \$500 to \$750 annually.
- (3) Three-way retailer's or dealers permit from \$750 to \$1,000 annually.

The bill requires 34% of the permit fees for certain permits to be deposited in the Enforcement and Administration Fund and 66% of the permit fees in the state General Fund (currently 100% of the permit fees for these permits are deposited in the General Fund). The bill also changes the distribution of the Excise Fund

to provide that 50% of the Excise Fund is deposited in the Enforcement and Administration Fund, 25% is distributed to the state General Fund, and 25% is distributed to municipal governments. This bill eliminates supplemental retailer permits and allows one-way, two-way, and three-way retail permit holders to sell alcoholic beverages on Sunday. The bill also increases the fee for a temporary bartender's permit from \$4 to \$5. This bill increases the fee for a tobacco certificate from \$50 to \$200 and the term of a certificate from one to three years. It increases the fee for an employee's permit used to perform volunteer service from \$5 to \$15. The bill also allows the Commission to suspend a permit if the permit holder has not paid the seller of the permit in accordance with the terms of the sale and the seller has obtained a judgment.

The bill makes it a Class A infraction for a person to sell or distribute tobacco products to a tobacco retailer who does not hold a valid tobacco sales certificate.

*Additional Permits Authorized:* The bill allows the Commission to auction not more than five three-way permits to restaurants in Jeffersonville and five three-way permits to restaurants in Clarksville that are located in an economic development area. This bill requires a minimum bid of \$35,000 and a renewal fee of \$1,350, that are deposited in the Enforcement and Administration Fund.

This bill allows the Commission to issue five three-way, two-way, or one-way permits to a restaurant that is located: (1) in a historic district in a city or town; or (2) not more than 500 feet from the historic district; if the historic district meets certain requirements. It provides that the legislative body of the city or town must adopt an ordinance requesting the Alcohol and Tobacco Commission to issue the permit. The bill provides that an applicant may not already have an alcoholic beverage permit for premises within a historic district or within 500 feet of a district that is subject to a quota. The bill also prohibits a permit issued under these provisions from being transferred.

*Employee Permit Applicant with Prior Convictions:* The bill provides that an individual may be denied an alcoholic beverage employee's permit if: (1) the individual has two convictions for operating while intoxicated that occurred within ten years before the date of the application; or (2) the individual completed serving a sentence for a conviction of operating while intoxicated within two years before the date of the application. The bill also provides that if an individual has three convictions for operating while intoxicated, the individual may apply to the Alcohol and Tobacco Commission and the Commission has the discretion to grant or deny the application.

*Notice by Publication Requirements:* This bill changes the publication requirement to require that the Commission publish notice of a new retailer or dealer's permit and notice of investigation one time in a newspaper of general circulation published in the county where the permit is located.

*Samples from Retailers/Dealers:* The bill allows a beer retailer to permit customers to sample beer and flavored malt beverages. It also allows a liquor retailer or dealer to allow customers to sample flavored malt beverages.

*Primary Source of Supply:* The bill also provides that if a primary source of supply acquires the rights to a product and decides not to have a beer wholesaler continue to distribute the product, the wholesaler must be compensated for the loss of the right to distribute the product or the wholesaler will continue to distribute the product.

*Wholesaler Discounts:* This bill allows a beer wholesaler to offer a special discount price to a beer dealer or

beer retailer if the beer or flavored malt beverage is a brand or package the beer wholesaler has discontinued or the beer or flavored malt beverage will expire within a certain date.

*Manufacturer Incentives:* The bill allows a manufacturer of alcoholic beverages to offer on a nondiscriminatory basis bona fide incentives to the wholesaler if the incentives are determined based on sales to retailers or dealers occurring during specified times and for specified products.

*Alcohol Vaporizing Device:* This bill makes the purchase, offer for sale, or possession of an alcohol vaporizing device or vaporized alcohol a Class A infraction. It makes a subsequent offense a Class A misdemeanor if a person knowingly or intentionally commits the subsequent offense.

*ATC Definition of Grocery Store:* This bill requires the Commission to adopt a definition of "grocery store" before January 31, 2006.

*Permittees & Innkeeper's Tax:* The bill also prohibits the Commission from issuing, renewing, or transferring a permit if an applicant has not paid Innkeeper's Taxes that are currently due.

**Effective Date:** Upon passage; July 1, 2005.

**Explanation of State Expenditures:** *Summary of Expenditures:* This bill will have an administrative cost impact on the ATC. The Indiana State Excise Police (ISEP) is the law enforcement division of the ATC. The provisions of this bill could cause an increase in enforcement costs to ISEP. It is presumed that the increase could be covered through the use of existing staff and resources. In addition, the bill would generate revenue through an increase in permit fees, which will help to offset the ATC and ISEP increased administrative costs.

*Alcohol Server Training:* The bill requires that the ATC establish applications, fees, standards, and renewal requirements for certification of alcohol server training programs. It is estimated the increase in administrative costs could be covered using existing staff and resources.

*Background:* The bill requires retail permittees to:

- (1) complete a certified alcohol server training program;
- (2) ensure that each alcohol server completes a certified alcohol server training program and attends refresher courses; and
- (3) maintain training verification records.

The bill would require approximately 100,000 employees to complete a certified training program before January 1, 2008.

The bill defines a retail permittee as a person who holds a:

- (1) beer retailer's permit under IC 7.1-3-4;
- (2) liquor retailer's permit under IC 7.1-3-9;
- (3) wine retailer's permit under IC 7.1-3-14; or,
- (4) liquor dealer permit under IC 7.1-3-10 for a package liquor store.

Approximately 10,000 retail establishments would be impacted by this bill. While all the bartenders and wait staff employed in these establishments would be required to participate in a training program, the exact number of employees is unknown. There are approximately 100,000 ATC Employee Permit holders in the state. An

Employee Permit is required of all clerks in liquor stores, bartenders, wait staff, and managers of establishments that serve alcoholic beverages by the drink.

Under the bill, affected retailers are required to ensure that employees receive training within 90 days of starting work and attend refresher courses. After July 1, 2005, prospective ATC Employee Permit holders must successfully complete a training program prior to receiving a permit. (Wait staff serving alcohol who are under the age of 21 are currently required to receive training before they are employed.)

ATC excise officers currently provide a free voluntary training to approximately 3,000 retailers each year. In addition to the training offered by the ATC, there are private companies that provide server training. There are four known for-profit companies that provide training. The average fee for this training is approximately \$30 per person. The number of employees trained by the services is unknown.

The ATC is funded with dedicated fee and tax revenue deposited in the Alcohol and Tobacco Commission's Enforcement and Administration Fund. As of the December 27, 2004, the ATC had seven vacancies, including vacancies in five excise officer positions.

(Revised) An increase in enforcement costs to the ISEP would be as a result of the following provisions of the bill:

- Samples from Retailers/Dealers;
- Primary Source of Supply;
- Wholesaler Discounts;
- Manufacturer Incentives;
- Alcohol Vaporizing Device; and,
- ATC Definition of Grocery Store

These sections represent new rights or restrictions for the alcoholic beverage industry. The creation of these new rights and restrictions could increase the burden on the ISEP by requiring them to monitor procedures of the industry that they currently do not monitor. It should be noted that the fee increases contained in this bill should provide the ATC with the funds needed to cover any additional regulatory costs incurred under these provisions.

*Alcohol Permit and Tobacco Certificate Changes:* The changes to permits provided in the bill will result in an indeterminable increase in administrative costs to the ATC. It is estimated that the increase in fee revenue will offset the increased costs.

*Notice by Publication Requirements:* This bill eliminates certain notice requirements relating to the issuance of alcoholic beverage permits by the ATC. The elimination of these requirements will result in a savings to the ATC.

(Revised) *Permittees & Innkeeper's Tax:* The bill also prohibits the Commission from issuing, renewing, or transferring a permit if an applicant has not paid Innkeeper's Taxes that are currently due. This provision will cause a slight increase in administrative costs of the ATC. It is presumed that this increase could be covered through the use of existing staff and resources, as well as offset by the increase in permit fees under the bill.

The ATC is currently required to communicate with local governments concerning a permit holder's payment

of property taxes. Adding the Innkeeper's tax to this procedure is not expected to be an administrative burden on the ATC.

**Explanation of State Revenues:** (Revised) *Summary:* This bill increases several of the alcoholic beverage permit fees, as well as increasing the fee for a tobacco certificate. Assuming the number of permits issued remains constant, the additional revenue that will be generated annually is approximately \$560,000. The bill also requires the ATC to establish a fee for training providers to obtain certification. These fees would be deposited in the Commission's Enforcement and Administration Fund. Under the bill, the ATC is responsible for setting the renewal date for a certificate. Therefore, the amount of fees collected will ultimately be dependant upon the number of applicants and the administrative actions of the ATC.

*Alcohol Server Training:* The bill also allows the Commission to fine, suspend, or revoke the permits of the affected retailers and employees for failing to comply with the bill's provisions. Civil penalties for violations of the ATC's rules are deposited in the Commission's Enforcement and Administration Fund.

The bill requires the ATC to establish a fee for training providers to obtain certification. These fees would be deposited in the Commission's Enforcement and Administration Fund.

The bill requires the ATC to issue a certificate to an applicant who:

- (1) files the required application and pays the fees as established by the ATC;
- (2) is a:
  - (A) nonprofit corporation or organization; or
  - (B) for-profit corporation or organization that does not have a pecuniary relationship with the alcoholic beverage industry;
- (4) is not a retail permittee; and,
- (5) meets the requirements of the rules adopted by the ATC under the bill.

Under the bill, the ATC is responsible for setting the renewal date for a certificate. Therefore, the amount of fees collected will ultimately be dependant upon the number of applicants and the administrative actions of the ATC.

(Revised) *Alcohol Permit and Tobacco Certificate Changes:* This bill increases several alcohol permit fees, increases the tobacco certificate fee, and repeals the employee permit fee. The table below illustrates the changes to fees as well as the changes to the permit renewal terms.

<i>Permit</i>	<i>Current Fee</i>	<i>New Fee*</i>	<i>Current Term (yrs.)</i>	<i>New Term (yrs.)</i>
<b><i>Dealer/Retailer Permits</i></b>				
<i>1-way</i>	\$250	\$500	1	2
<i>2-way</i>	\$500	\$750	1	2
<i>3-way</i>	\$750	\$1,000	1	2
<b><i>Supplemental Retailer</i></b>	ELIMINATED			
<b><i>Temp. Bartender Permit</i></b>	\$4	\$5	NA	NA
<b><i>Volunteer Permit</i></b>	\$5	\$15	2	2
<b><i>Tobacco Certificate</i></b>	\$50	\$200	1	3

\*Note that the new dealer/retailer fees are required to be paid annually under the bill.

The total new revenue generated by the increase in fees is estimated at approximately \$560,000.

This bill also makes it a Class A infraction for a person to sell or distribute tobacco products to a tobacco retailer who does not hold a valid tobacco sales certificate. The maximum judgment for a Class A infraction is \$10,000, which would be deposited in the state General Fund. However, any additional revenue is likely to be minimal.

(Revised) *Permit Fee Distributions*: This bill changes the way that permit fees and tobacco certificate fees are distributed. The overall yearly impact on the various funds is as follows:

- the state General Fund will receive approximately \$570,000 *less* revenue.
- cities and towns overall will receive approximately \$3.2 M *less* revenue.
- the Enforcement Fund will receive approximately an additional \$4.2 M.
- the state Excise Police Retirement Fund will receive approximately an additional \$76,000 in revenue.

These estimates assume that the number of current permit holders will stay constant. The decrease in the revenue going to cities and towns is purely a result of the bill's change in the distribution of retailer and dealer permit fees. The table below shows the changes in distribution and the shifts in revenue in more detail.

<b>Retailer/Dealer Permits</b>				
<b>Current Distribution</b>	<b>Current Fees</b>	<b>Change</b>	<b>New Fees</b>	<b>New Distribution</b>
General Fund 1/3	\$2,612,000	(\$570,438)	\$2,041,563	25% General Fund
Cities and Towns 2/3	\$5,224,000	(\$3,182,438)	\$2,041,563	25% Cities and Towns
Enforcement Fund NONE	\$0	\$4,083,125	\$4,083,125	50% Enforcement Fund
<b>Tobacco Certificates</b>				
Enforcement Fund	\$412,500	\$136,125	\$548,625	Enforcement Fund
<b>Volunteer Permits</b>				
Excise Retirement	\$38,070	\$76,140	\$114,210	Excise Retirement
<b>Temporary Bartender</b>				
Enforcement Fund	\$60,244	\$15,061	\$75,305	Enforcement Fund

<b>Totals by Fund</b>				
	<b>Current Fees</b>	<b>Change</b>	<b>New Fees</b>	
TOTAL REVENUE	\$8,346,814	\$557,576	\$8,904,390	TOTAL REVENUE
General Fund	\$2,612,000	(\$570,438)	\$2,041,563	General Fund
Cities and Towns	\$5,224,000	(\$3,182,438)	\$2,041,563	Cities and Towns
Enforcement Fund	\$472,744	\$4,234,311	\$4,707,055	Enforcement Fund
Excise Retirement	\$38,070	\$76,140	\$114,210	Excise Retirement

(Revised) *Additional Permits Authorized:* The bill also allows the ATC to auction not more than five three-way permits to restaurants in Jeffersonville and Clarksville that are located in an economic development district. The bill requires a minimum bid of \$35,000 and a renewal fee of \$1,350, that are deposited in the Enforcement and Administration Fund (EA Fund). If all 5 permits are sold for the minimum bid in each municipality, the increase in revenue to the EA Fund will be approximately \$175,000 from the auction, and approximately \$8,500 per year in renewal fees.

This bill will also allow the ATC to issue not more than five (5) three-way, two-way, or one-way permit, without regard to quotas, to a restaurant that is located:

- (1) in a historic district in a city or town; or
- (2) not more than 500 feet from the historic district.

The historic district where the restaurant is located must also meet the following requirements:

- (a) The district has been listed in the National Register of Historic Places maintained under the National Historic Preservation Act of 1966, as amended.
- (b) A county courthouse is located within the district.
- (c) A historic opera house listed on the National Register of Historic Places is located within the district.
- (d) A historic jail and sheriff's house listed on the National Register of Historic Places is located within the district.

There is only one eligible district known at this time located in downtown Valparaiso. The initial fee for a permit under these provisions is \$10,000, with a renewal fee of \$2,000. The increase in revenue from these provisions could be as much as \$50,000 in initial fees and \$10,000 per year in renewal fees. This revenue will be distributed as follows: 25% to the General Fund; 25% to Cities and Towns; and 50% to the Enforcement and Administration Fund.

*Employee Permit Applicant with Prior Convictions:* This bill allows a person that:

- (1) has two unrelated convictions for operating while intoxicated (OWI), and at least one of those convictions was more than 10 years before applying; or,
  - (2) has completed a sentence for a conviction for OWI more than two years before applying;
- to be granted an alcoholic beverage employee's permit. The bill also allows the ATC the discretion to grant or deny an application by a person with 3 unrelated OWI convictions.

The ATC estimates that in 2004 about 15 to 25 more individuals would have been permitted to apply. There is a biennial fee of \$30 for an employee's permit. Revenue from this fee is deposited in the Excise Police Retirement Fund to pay benefits and administrative costs. Surplus revenue goes to the Enforcement and Administration fund for ATC administrative costs. In FY 2004 the total revenue from employee's permit fees was \$1,646,977.

*Alcohol Vaporizing Device:* This bill makes the purchase, offer for sale, or possession of an alcohol vaporizing device or vaporized alcohol a Class A infraction. It makes a subsequent offense a Class A misdemeanor if a person knowingly or intentionally commits the subsequent offense.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

**Explanation of Local Expenditures:** *Additional Permits Authorized:* This bill also provides that the legislative body of the city or town must adopt an ordinance requesting the ATC to issue the permit. This provision could have an administrative cost impact on the local legislative body, but it is presumed that the impact could be covered through the use of existing staff and resources.

*Alcohol Vaporizing Device:* A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

**Explanation of Local Revenues:** (Revised) If additional court actions are filed and a judgment is entered, local governments would receive revenue from court fees. However, any additional revenue is likely to be small. Also see *Explanation of State Revenues (Permit Fee Distributions;* as well as *Additional Permits Authorized*).

*Alcohol Vaporizing Device:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** Alcohol and Tobacco Commission.

**Local Agencies Affected:** Legislative body of an eligible city or town; Trial courts, local law enforcement agencies.

**Information Sources:** David Heath, Commissioner, Alcohol and Tobacco Commission, 232-2444.

**Fiscal Analyst:** Adam Brown, 317-232-9854.